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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/667,655

09/23/2003

Nyle S. Elliott

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7590 01/02/2009  
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EXAMINER

MARCETICH, ADAM M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

01/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/667,655	<b>Applicant(s)</b> ELLIOTT, NYLE S.	
	<b>Examiner</b> Adam Marcetich	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 9 and 21-24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Note***

1. In view of the appeal brief filed on 20 August 2008 PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.
2. To avoid abandonment of the application, appellant must exercise one of the following two options:
3. (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
4. (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.
5. A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761

### ***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1, 2, 4, 6 and 7 are rejected under 35 U.S.C. 103(a) as being

unpatentable over von Ravo; Biagio (US 5108430) in view of Lucas; Paul D. et al. (US 6568274).

10. Regarding claims 1, 2, 4, 6 and 7, Ravo discloses an alert device for detecting

the presence of fecal matter comprising:

[1] a pad having an aperture (col. 4, lines 1-12, Figs. 1, 2, support member 3 having cylindrical body portion 7 defining interior space);

[1] an alarm attached to said pad (col. 5, lines 25-48, especially lines 25-29);

[1] a first and second conductor extending from said aperture to said alarm (col. 5, lines 25-48, especially lines 33-40, electrical circuit, wires not shown; Examiner notes that an electrical circuit requires at least two conductors);

[1] a plug (col. 4, lines 1-12, Figs. 1, 2, disc-shaped plug 5); and

[1] said plug removably secured to said pad at said aperture (col. 4, lines 33-41);

[2] wherein said alarm emits an audible alarm (col. 5, lines 58-62);

[4] wherein said alarm emits a tactile alarm (col. 2, lines 62-64, col. 5, lines 25-48, signal transmitted to patient's skin);

[6] wherein said plug is secured in said aperture by mating threads (col. 4, lines 33-41, Figs. 1, 2, threaded portions 17 and 23);

[7] wherein said pad is a flexible, elastomeric material (cols. 4-5, lines 58-2, 7-13, reticulated polyurethane).

Ravo discloses the invention substantially as claimed, see above. However, Ravo lacks third and forth conductors as claimed [claim 11]. Lucas discloses a capacitive pressure transducer assembly (col. 5, lines 45-63, especially lines 45-48, Figs. 3A, 3B, transducer assembly 200, transducer assembly 100) further comprising a third and forth conductor on a plug (cols. 10-11, lines 62-19, especially lines 10-15, Fig. 3C, feedthrough 280 and additional feedthrough).

Lucas provides the advantage of sensing pressure using a removable diaphragm pressure transducer. Ravo calls for placing electrical components within a tube (Ravo col. 5, lines 33-48, electrical components as part of body portion 7). In the event of a breakdown or malfunction, the tube would need surgical removal. By placing more sensitive components such as a pressure sensor in the removable plug 5 of Ravo, replacement of a worn out or malfunctioning pressure transducer can be performed quickly and without surgery. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ravo as

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discussed with the third and fourth conductors on a plug as taught by Lucas in order to provide interchangeability of parts and avoid surgery when a pressure transducer fails.

11. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over von Ravo; Biagio (US 5108430) in view of Lucas; Paul D. et al. (US 6568274), further in view of Johnson (US 5266928).

12. Regarding claims 3 and 5, Ravo in view of Lucas discloses the invention as substantially claimed, see above. However, Ravo in view of Lucas lacks a visible alarm or transmitted signal as claimed [claims 3 and 5]. Johnson discloses an alert device wherein the alarm emits a visible alarm or transmits a signal to a remote location (column 8, lines 1-13). Johnson provides the advantage of providing multiple channels to alert a caregiver or user. For example, a user with either impaired vision or hearing may rely more heavily on either audio or visual clues. Transmitting to a remote location provides the advantage of allowing caregivers to leave the user's immediate area. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ravo in view of Lucas as discussed with the alarms as taught by Johnson in order to effectively alert a caregiver or user.

13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over von Ravo; Biagio (US 5108430) in view of Lucas; Paul D. et al. (US 6568274), further in view of Kim (US 5569216).

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14. Regarding claim 8, Ravo in view of Lucas discloses the invention as substantially claimed, see above. However, Ravo in view of Lucas lacks an inflatable cuff as claimed [claim 8]. Kim discloses an inflatable cuff encircling a plug (column 2, lines 61-67 through column 3, lines 1-2 and Figs. 1-2, external balloon 100). Kim provides the advantage of preventing leakage of gases and liquids (column 1, lines 7-12). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ravo in view of Lucas as discussed with the inflatable cuff as taught by Kim in order to prevent leakage.

15. Claim s 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over von Ravo; Biagio (US 5108430) in view of Lucas; Paul D. et al. (US 6568274), further in view of von Dyck (US 6350255).

16. Regarding claim 10, Ravo in view of Lucas discloses the invention substantially as claimed, see above. However, Ravo in view of Lucas lacks an absorbent sleeve as claimed [claim 10]. von Dyck discloses an absorbent sleeve disposed about a tube (column 13, lines 50-57 and Figs. 1-3, bolster 16 comprising foam surrounding catheter 14).

17. von Dyck provides the advantage of absorbing any waste materials that may bypass sealing means of Ravo. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ravo in view of Lucas as discussed with the absorbent sleeve as taught by von Dyck in order to absorb any additional waste materials.

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18. Regarding claim 11, Ravo in view of Lucas discloses the invention substantially as claimed, see above. However, Ravo in view of Lucas lacks a filter as claimed [claim 11]. von Dyck discloses a plug including a filter (column 8, lines 38-49, especially lines 47-49, filter (not shown) within port 52 of catheter 14). von Dyck provides the advantage of filtering any flatus gases that are received within a chamber as during normal use. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ravo in view of Lucas as discussed with the filter as taught by von Dyck in order to filter flatus gases.

19. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over von Ravo; Biagio (US 5108430) in view of Lucas; Paul D. et al. (US 6568274), further in view of McDonnell (US 4121589).

20. Regarding claim 12, Ravo in view of Lucas discloses the invention as substantially claimed, see above. However, Ravo in view of Lucas lacks an adhesive ring as claimed [claim 12]. McDonnell discloses an adhesive ring attached to one side a pad (column 3, lines 54-56 and Fig. 1, adhesive material 9). McDonnell provides the advantage of providing additional sealing force between a user and waste collection device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ravo in view of Lucas as discussed with the adhesive ring as taught by McDonnell in order to provide additional sealing force. In this modification, adhesive material 9 is placed about an outer flange 13 of Ravo.



***Allowable Subject Matter***

21. Claims 9 and 21-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

22. Applicant's arguments, see p. 3-7 filed 20 August 2008 with respect to the rejection(s) of claim(s) 1-12 and 21-24 under 35 USC § 103 over von Dyck in view of Johnson and Brown have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ravo in view of Lucas, Von Dyck, Johnson, Kim and McDonnel.

23. If any amendments to the claims are desired for overcoming rejections of record, Examiner recommends phrasing them in positive language. While negative limitations are legitimate and do not preclude patentability, positive recitations are generally more effective. There is nothing inherently ambiguous or uncertain about a negative limitation, as long as it is properly supported by the specification. See MPEP 2173.05(i), Negative Limitations. However, adding language to positively claim structures and functions is generally more helpful in clearly defining the invention as compared to negative limitations, since the presence of a structure or function is more easily seen, depicted or discerned than its absence or omission.

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

25. Examiner has applied new grounds of rejection not necessitated by amendment.
- Therefore, the finality of the previous Office Action applied 17 March 2008 is withdrawn.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam Marcetich/  
Examiner, Art Unit 3761

/Leslie R. Deak/  
Primary Examiner, Art Unit 3761  
30 December 2008